Hazlinda bte Hamzah v Kumon Method of Learning Centre

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–04–78 OF 2004
GOPAL SRI RAM, MOHD NOOR ABDULLAH AND HASHIM YUSOFF JJCA
6 MARCH 2006

Administrative Law — Exercise of judicial functions — Judicial review — Tribunal for Consumer Claims — Whether award must be in writing — Whether tribunal could order partial refund — Whether awards should not be struck down save in the rarest of cases — Consumer Protection Act 1999 s 114

The respondent ran a tuition centre. The appellant put her three children in it. However she found the services rendered by the respondent to be wanting and wanted a refund of the fee she had paid the respondent. She filed her claim with the Tribunal for Consumer Claims ('the tribunal'). The tribunal ordered the respondent to make a partial refund. The respondent applied to the High Court for judicial review to quash the tribunal's decision. The judicial commissioner quashed the tribunal's award on the ground that it had not given written reasons for its award in accordance with s 114 of Consumer Protection Act 1999 ('the Act'). Although the letter of the tribunal's chairman dated 24 April 2003 stated that no grounds of judgment were issued, written reasons were made available under cover of a letter dated 20 August 2004. In the meantime, the judicial commissioner had already delivered her judgment on 24 May 2004 whereby she quashed the award for breach of s 114 of the Act. The appellant appealed.

The respondent submitted that: (1) s 114 is mandatory in its language and that its breach warranted the issuance of certiorari; (2) the High Court having written to the tribunal to give its reasons and having adjourned the substantive application for judicial review on several occasions was entitled to quash the award. Further, the tribunal in its letter of 24 April 2003 had specifically said that no grounds had been issued; and (3) the tribunal committed an error of law because it ordered a partial refund of the consideration paid by the appellant to the respondent when there was absent here a total failure of consideration.

Held, allowing the appeal:

(1) All that s 114 says is that the tribunal must give reasons for making its award. The section does not say that the reasons must be in writing. Nor does it fix any time limit for the delivery of reasons. Having regards to the general scheme of the Act, it is sufficient if the tribunal gives oral reasons. What is important is the speedy disposal of a dispute with oral reasons for the decision. If the need arises, the tribunal may deliver written reasons at a later point in time. It followed that there was no breach of s 114 of the Act. There was therefore

certainly no warrant for the grant of certiorari in this case (see para 10). There was also no reason for the judicial commissioner to have rejected the appellant's affidavit evidence setting out the oral reasons when there was no challenge to that evidence (see para 11).

(2) The tribunal had the power to direct a refund. There was no error of law at all here (see para 12).

(3) Being a specialist body, the tribunal has been conferred with extraordinary powers to do speedy justice for consumers. As such, its awards should not be struck down save in the rarest of cases, where it has misinterpreted some provision of the Act in such a way to produce an injustice (see para 13).

[Bahasa Malaysia summary

Responden menjalankan satu pusat tuisyen. Perayu telah mendaftarkan tiga orang anaknya ke sana. Namun beliau mendapati perkhidmatan yang diberikan oleh responden mempunyai kekurangannya dan ingin yuran yang beliau telah bayar kepada responden itu dikembalikan. Beliau telah memfailkan tuntutan beliau dengan Tribunal Tuntutan Pengguna ('tribunal tersebut'). Tribunal tersebut telah memerintahkan responden membayar balik sebahagian daripada jumlah tersebut. Responden telah memohon ke Mahkamah Tinggi untuk semakan kehakiman agar keputusan tribunal tersebut dibatalkan. Pesuruhjaya kehakiman telah membatalkan award tribunal tersebut atas alasan bahawa ia tidak memberikan alasan bertulis menurut s 114 Akta Perlindungan Pengguna 1999 ('Akta tersebut'). Meskipun surat pengerusi tribunal tersebut bertarikh 24 April 2003 menyatakan bahawa tiada alasan penghakiman telah diberikan, alasan bertulis terdapat pada sampul surat bertarikh 20 Ogos 2004. Sementara itu, pesuruhjaya kehakiman telahpun menyampaikan penghakimannya pada 24 Mei 2004 di mana beliau telah membatalkan award kerana pelanggaran s 114 Akta tersebut. Perayu telah mengemukakan rayuan.

Responden telah berhujah bahawa: (1) s 114 adalah mandatori dari segi bahasanya dan bahawa pelanggarannya mewarankan pengeluaran certiorari; (2) Mahkamah Tinggi yang telah menulis kepada tribunal tersebut untuk memberikan alasannya dan yang telah menangguhkan permohonan substantif untuk semakan kehakiman beberapa kali berhak untuk membatalkan award tersebut. Bahkan, tribunal tersebut dalam suratnya 24 April 2003 secara khusus menyatakan tiada alasan telah dikemukakan; dan (3) tribunal tersebut telah melakukan kesilapan dari segi undang-undang kerana ia memerintahkan agar pembayaran balik sebahagian daripada jumlah yang telah dibayar oleh perayu kepada responden walhal di sini tidak berlaku sebarang kegagalan berhubung bayaran tersebut.

Diputuskan, membenarkan rayuan:

(1) Apa yang dinyatakan oleh s 114 adalah bahawa tribunal tersebut hendaklah memberikan alasan dalam membuat awardnya. Seksyen itu tidak menyatakan bahawa alasan tersebut hendaklah dilakukan secara bertulis. Maupun dinyatakan perlu ditetapkan had masa untuk mengemukakan alasan tersebut. Dengan mengambilkira skima am Akta tersebut ia adalah memadai jika

tribunal tersebut memberikan alasan secara lisan. Apa yang penting adalah penyelesaian segera suatu pertikaian dengan alasan lisan untuk membuat keputusan. Jika timbul keperluan, tribunal tersebut boleh mengemukakan alasan bertulis kemudian. Oleh itu tidak berlaku pelanggaran s 114 Akta tersebut. Tiada waran diperlukan untuk membenarkan certiorari dalam kes ini (lihat perenggan 10). Juga tiada alasan untuk semakan kehakiman untuk menolak keterangan afidavit perayu yang menyatakan alasan lisan bila mana tiada cabaran terhadap keterangan tersebut (lihat perenggan 11).

(2) Tribunal tersebut mempunyai kuasa untuk mengarahkan bayaran balik. Tiada kesilapan dari segi undang-undang berlaku di sini (lihat perenggan 12).

(3) Tribunal tersebut, yang merupakan satu badan pakar, telah diberikan kuasa luar biasa untuk melaksanakan keadilan dengan cepat untuk pengguna. Oleh itu, awardnya tidak patut dibatalkan kecuali dalam kes-kes luar biasa, di mana ia telah membuat salah tafsir beberapa peruntukan Akta tersebut sehingga menyebabkan ketidakadilan (lihat perenggan 13).]

Notes

For cases on judicial review, exercise of judicial functions, see 1 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 116–132.

Cases referred to

Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32 (refd)
Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor [1995] 3 MLJ 369 (refd)
R v Medical Appeal Tribunal, ex p Gilmore [1957] 1 QB 574 (refd)
R Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145 (refd)
Sangram Singh v Election Tribunal AIR 1955 SC 425 (refd)

Legislation referred to

Constitution [India] art 226
Consumer Protection Act 1999 ss 97, 98, 99(2), 108(1), (2), 109, 110, 111, 112(2), 114
Courts of Judicature Act 1964
Sale of Goods Act 1956

Appeal from: Application for Judicial Review No R2–25–79 of 2003 (High Court, Kuala Lumpur)

Jessica Ram Binwani (Meena Raman & Partners) for the appellant.
Ling Young Tuen (Wan Soo Khwan with him) (SK Wan & Partners) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court):

[1] The respondent runs a tuition centre. The appellant put her three children in it. Like many parents she wanted her children's English and Mathematics to improve: for them to do well in their studies. But she found the services rendered by

A the respondent to be wanting. She was very disappointed. She wanted a refund of the fee she had paid the respondent. The respondent was not forthcoming. So she went to the Tribunal for Consumer Claims ('the Tribunal') and filed her claim there. The Tribunal found for her. It ordered the respondent to make a partial refund. That is because it concluded that the appellant had in fact received some benefit. B The respondent then applied to the High Court for judicial review to quash the Tribunal's decision. It succeeded. The Tribunal's award was quashed. The appellant appealed to us.

[2] Formerly such a case such as this, where a consumer complains of defective C products or services, would have had to have been filed in the magistrate's court. The disposal of the case would take ages. And there was no hope of recovering anything unless it was established that there was a total failure of consideration. This is because of the decision in *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32. Consumers were therefore in a very disadvantaged D position. They had little or no protection. Almost always it was the defaulting tradesman who gained.

[3] It was to remedy this injustice that Parliament enacted the Consumer Protection Act 1999 ('the Act') which came into force on 15 November 1999. E Its long title sets out its general objective. It says this:

> An Act to provide for the protection of consumers, the establishment of the National Consumer Advisory Council and the Tribunal for Consumer Claims, and for matters connected therewith.

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[4] It has several important provisions, some of which are more beneficial than those found in the Sale of Goods Act 1956. They apply to both goods and services. The purpose of those provisions is to protect consumers from the provision of defective goods and services and to give claimants speedy relief. Parliament knew that G if matters were left to the ordinary courts, the protection it had set about giving to consumers would be rendered illusory. So it established the Tribunal. A few words must be said about the way it functions and its powers.

[5] The jurisdiction of the Tribunal is limited to hearing claims not exceeding H RM25,000 (s 98) and proceedings before it are commenced by lodging a claim with it in the prescribed form (s 97) within three years of the claim accruing (s 99(2)). Parties are entitled to attend and be heard (s 108(1)) but are not entitled to legal representation (s 108(2)). The Act in s 109 requires the hearings of the Tribunal to be open to the public and by s 110 empowers the Tribunal to take evidence and 'to I generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim.' The words to which emphasis has been supplied reflect the central theme of the Act, namely, the speedy disposal of consumer claims. You will find it repeated in s 112(1) of the Act which requires the Tribunal to make its award 'without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences'.

[6] The Tribunal has very wide powers. These are to be found in s 112(2) which, among other things, enables the Tribunal to direct the payment of money or to direct the refund of the consideration paid for goods or services or to direct payment of compensation or to vary or set aside a contract wholly or in part. Its powers are exercisable even in the event that the party complained against fails to appear at the hearing (see s 111 of the Act.)

[7] Section 114 of the Act is of particular relevance to the present instance. It says that: 'The Tribunal shall in all proceedings give its reasons for its award in the proceedings.' The section is relevant because in the present instance, the sole ground on which the High Court quashed the Tribunal's award was that it had not given *written* reasons for its award. This is how the matter arose.

[8] When the matter came on for hearing on 15 April 2003, the respondent was absent. The Tribunal then handed down its award requiring the respondent to make a partial refund. This was later reduced into writing in the form of an award and sent to the parties. In the letter of the Tribunal's chairman, Mr Eddie Yeo Soon Chye which is dated 24 April 2003 quoted *in extenso* by the learned judicial commissioner in her judgment, there is reference to the award that was handed down on 15 April 2003. The letter goes on to say that no grounds of judgment were issued. In point of fact, the oral reasons for the award were given. Written reasons were made available under cover of a letter dated 20 August 2004. In the meantime the judicial commissioner had already delivered her judgment on 24 May 2004 whereby she quashed the award for breach of s 114 of the Act. However, the appellant had by way of her affidavit delivered in opposition to the judicial review application made available to the High Court her note of the oral reasons given by the learned chairman when he made his award on 15 April 2003. If you look at her note and compare it with the written reasons later furnished by the Tribunal you will find that they match. The judicial commissioner rejected the appellant's note on the ground that the Tribunal had in its letter of 24 April 2003 stated that no grounds of judgment had been issued.

[9] Before us, learned counsel for the respondent (whom we called upon to address us as to why the appeal should not be allowed) made two submissions. The first is that s 114 is mandatory in its language and that its breach warranted the issuance of certiorari. The second is that the High Court having written to the Tribunal to give its reasons and having adjourned the substantive application for judicial review on several occasions was entitled to quash the award. Further, the Tribunal in its letter of 24 April 2003 had specifically said that no grounds had been issued, thereby casting doubt on the veracity of the written reasons of the Tribunal sent under cover of its letter of 20 August 2004. Both these submissions lack any merit.

[10] In the first place, all that s 114 says is that the Tribunal must give reasons for making its award. The section does not say that the reasons must be in writing. Nor does it fix any time limit for the delivery of reasons. Having regard to the general scheme of the Act it is sufficient if the Tribunal gives oral reasons. What is important is the speedy disposal of a dispute with oral reasons for the decision. If the need arises, the Tribunal may deliver written reasons at a later point in time. If the Tribunal

refuses to deliver any reasons — which is certainly not the case here — then the obvious remedy open to the respondent was to move the High Court for mandamus requiring the immediate production of the reasons. As it happens, there was here a claim for mandamus. But it was never pursued. The judicial commissioner's attention was not drawn to it. Instead, the respondent stood by while the High Court kept adjourning the proceedings to await written reasons. This was certainly unnecessary as there is no requirement for the Tribunal to produce written reasons. It follows from what has been said thus far that there was no breach of s 114 of the Act. There was therefore certainly no warrant for the grant of certiorari in this case.

[11] In the second place, the suggestion that there were never any reasons given by the Tribunal for making its award — a suggestion that apparently found favour with the judicial commissioner — and that the written reasons actually produced lack veracity is an unfair and unwarranted attack on the integrity of the learned chairman of the Tribunal who dealt with this case. Mr Eddie Yeo was a very senior member of the Legal and Judicial Service. He served the Government with distinction. His integrity is unquestionable. To suggest that the delay in producing the written reasons casts doubt on its genuineness is most unfair. It is most unfortunate that the learned judicial commissioner misinterpreted the letter of 24 April 2003 to mean that no reasons were ever given. She should have appreciated that the Tribunal unlike ordinary courts is not enjoined by law to deliver written reasons. Even the ordinary courts often deliver decisions with short oral reasons followed at a later date with full written reasons. There was also no reason for her to have rejected the appellant's affidavit evidence setting out the oral reasons when there was no challenge to that evidence. How could there be any challenge? After all, the respondent did not even bother to attend the hearing before the Tribunal.

[12] There remains one final matter which requires mention. As already observed, the Tribunal is a specially constituted body to speedily deal with consumer's complaints. Although its awards are final (which means that they are final on the facts but not on the law: *R v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574) they are amenable to judicial review. It is the submission of learned counsel for the respondent that the Tribunal committed an error of law because it ordered a partial refund of the consideration paid by the appellant to the respondent when there was absent here a total failure of consideration. With respect, it is to overcome this sort of technical common law rule that the Act conferred wide powers on the Tribunal. As already demonstrated, the Tribunal has the power to direct a refund. It did so in this case. So there is no error of law at all here.

[13] Being a specialist body, the Tribunal has been conferred with extraordinary powers to do speedy justice for consumers. As such, its awards should not be struck down save in the rarest of cases, where it has misinterpreted some provision of the Act in such a way to produce an injustice. For courts should be ever remindful that certiorari is not a remedy that is available as of right. It is a discretionary remedy. It is not every error of law committed by an inferior tribunal that entitles the High Court to issue certiorari. It must be demonstrated that the error has occasioned an injustice in a broad and general sense. This principle was laid down by the Federal Court in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ

369 and in *R Rama Chandran v The Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145 where the following passage in the judgment of Bose J in *Sangram Singh v Election Tribunal* AIR 1955 SC 425 was applied with approval:

> That, however, is not to say that the jurisdiction [to issue certiorari] will be exercised whenever there is an error of law. The High Courts do not, and should not, act as courts of appeal under art 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognized lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. *They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be.* Therefore, writ petitions should not be lightly entertained in this class of case. (Emphasis added.)

[14] Two points need to be made. First, that art 226 of the Indian Constitution is in essence identical to Paragraph 1 of the Schedule to the Courts of Judicature Act 1964. Second, the words in the judgment of Bose J to which emphasis has been lent above are entirely apposite to the Tribunal established by the Act.

[15] At the conclusion of the arguments on 6 February 2006, this appeal was allowed. The orders of the High Court were set aside. The substantive motion for judicial review was dismissed. It was also ordered that the appellant was to have the costs occasioned here and in the court below. The deposit was ordered to be refunded to the appellant.

Appeal allowed.

Reported by Loo Lai Mee